

Subject
LS-2089
322c
Consultant
Services

19 February 1953

OGC Has Reviewed

MEMORANDUM FOR: Chief, Political and Psychological Warfare

THROUGH: Deputy Director/Plans
Deputy Director/Administration

FROM: Office of General Counsel

SUBJECT: [REDACTED] - Consultant Pay

1. You have requested an opinion as to whether [REDACTED] may properly receive compensation as a consultant with the Agency without relinquishing his disability retirement pay as a Lieutenant Colonel for those days in which consultation was performed. It is assumed that the retirement was for physical disability not incurred in combat with an enemy of the United States nor resulting from an explosion or an instrumentality of war.

2. This question has been the subject of detailed consideration by this office in the light of pertinent decisions by the Comptroller General. The controlling legislation is found in Section 212 of the Economy Act of June 30, 1932, 47 Stat. 406, as amended, 5 U. S. C. 59a. That section is concerned specifically with situations involving persons in receipt of retired pay from the United States for or on account of services as a commissioned officer in the armed forces who by appointment or election hold civilian offices or positions under control of the United States Government, and its purpose is to prohibit the concurrent receipt by a person so situated, of retired pay incident to his commissioned service and the compensation of the civilian office or position held, if the combined rate thereof exceeds \$3,000 per annum. The Comptroller General in a decision dated December 29, 1948, reported at 28 Comp.Gen. 351, stated that where the nature of the duties required of the consultant " . . . is purely advisory, generally performed at infrequent intervals, and the compensation payable therefor is upon a fee basis, as distinguished from a purely time basis, the status of the employee is not such as would constitute the holding of an office or position within the contemplation of section 212 . . . " and would therefore permit the acceptance of fees without relinquishing retired pay for those days on which the consultation was performed. The decision further set forth that " . . . particular one of the enumerated elements is considered as determinative of the matter. On the contrary, the absence of any one of such elements is sufficient to take a particular case out of the rule enunciated"

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3. For further clarification, reference is made to an unpublished decision of the Comptroller General, dated October 19, 1951, No. B-105707, wherein a favorable ruling was made on an inquiry concerning a retired Naval officer employed by this agency as a consultant specialist in naval aspects of national intelligence estimates. It was therein stated " * * * that the consultant services of . . . [the officer] . . . when called upon from time to time are purely advisory and rather infrequent. Also, that such consultations normally do not require more than one day but in the event they should extend over into the next day . . . [he] . . . would only be entitled to one fee of \$50."

4. It should be observed, however, that the Comptroller General's decisions do not reveal the meaning of the words which say that the consultant duty required is "generally performed at infrequent intervals." No guide is given as to whether this means once every three months or once every three days. The General Counsel to the Comptroller General has given no indication of where the dividing line might lie but he has indicated informally that ten to twelve days a month may be considered as performance at infrequent intervals.

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5. In summary, if [redacted] duties would be truly intermittent and purely advisory with compensation on a fee basis per consultation, he would accept the fees without relinquishing his retired pay for those days on which consultation was performed. If further discussion or clarification is desired please advise us.

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[redacted]

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